

Message Text

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PAGE 01 VIENNA 07376 01 OF 02 130818Z

ACTION COME-00

INFO OCT-01 EUR-12 IO-13 ISO-00 AID-05 CIAE-00 EB-08

FRB-03 INR-07 NSAE-00 USIA-06 TRSE-00 XMB-02

OPIC-03 SP-02 LAB-04 SIL-01 OMB-01 NSC-05 SS-15

STR-04 CEA-01 L-03 H-01 ITC-01 AGRE-00 DODE-00

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R 121645Z AUG 77

FM AMEMBASSY VIENNA

TO SECSTATE WASHDC 2924

AMEMBASSY LONDON BY POUCH

AMEMBASSY COPENHAGEN BY POUCH

AMEMBASSY OSLO BY POUCH

AMEMBASSY STOCKHOLM BY POUCH

AMEMBASSY LISBON BY POUCH

AMEMBASSY BERN BY POUCH

USMISSION GENEVA BY POUCH

LIMITED OFFICIAL USE SECTION 1 OF 2 VIENNA 7376

GENEVA FOR MTN

EO 11652: NA

TAGS: ETRD, EFTA, AU

SUBJECT: PUBLIC SUPPLY PROCUREMENT IN EFTA

REF: (A) STATE 77 A-3063; (B) 71 VIENNA A-81; (C) 70 VIENNA

A-461; (D) 69 VIENNA A-584; (E) 66 VIENNA A-369

1. SUMMARY: ACCORDING TO GOA SOURCES, THE EFTA AGREEMENT FOR REGIONAL COOPERATION IN PUBLIC SUPPLY PROCUREMENT HAS RESULTED IN A NOTICEABLE LIBERALIZATION OF GOVERNMENT PURCHASING POLICIES AND PRACTICES. WHILE THE SYSTEM IS NOT REGARDED AS PERFECT, ITS PRAGMATIC CHARACTER, THE ABSENCE OF RIGID PROCEDURAL RULES, AND THE INFORMAL REVIEW AND LIMITED OFFICIAL USE

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PAGE 02 VIENNA 07376 01 OF 02 130818Z

ARBITRATION METHODS MADE IT ACCEPTABLE TO MEMBER COUNTRIES WITHOUT NECESSITATING MAJOR CHANGES IN NATIONAL LEGISLATION. GOA AUTHORITIES ADMIT, HOWEVER, THAT AN AGREEMENT OF THIS KIND MAY WORK ONLY IN AN ORGANIZATION SUCH AS EFTA, WHERE THE LACK OF GEOGRAPHIC PROXIMITY AMONG MEMBER STATES HAS HELD SUPPLIER INTEREST IN FOREIGN GOVERNMENT CONTRACTS TO RELATIVELY LOW LEVELS. END SUMMARY.

2. THE FOLLOWING INFORMATION IS KEYED TO QUESTIONS IN PARA 4 OF REF A.

A. THE EFTA PUBLIC PROCUREMENT GUIDELINES ARE REGARDED AS AN IMPORTANT STEP TOWARDS REMOVING DISCRIMINATION AGAINST FOREIGN SUPPLIERS BIDDING FOR GOVERNMENT CONTRACTS. IN RECENT YEARS, THERE HAVE BEEN FEWER COMPLAINTS FROM AUSTRIAN SUPPLIERS ABOUT UNFAIR TREATMENT BY PUBLIC PROCUREMENT AGENCIES IN OTHER EFTA COUNTRIES.

B. PUBLIC PROCUREMENT IN AUSTRIA IS REGULATED BY OENORM A-2050 "PLACING OF ORDERS BY PUBLIC AUTHORITIES", IN JUNE 1963, THE AUSTRIAN GOVERNMENT DECIDED THAT ALL FEDERAL BUYING DEPARTMENTS MUST FOLLOW THE PRINCIPLES SET OUT IN OENORM A-2050. ARTICLE 1, 34 OF THE ORDER SPECIFIES "IF CIRCUMSTANCES PERMIT, ONLY PRODUCTS OF AUSTRIAN ORIGIN SHALL BE USED AND ONLY AUSTRIAN FIRMS SHALL BE ENGAGED". FOLLOWING THE LISBON AGREEMENT OF OCTOBER 1966, INTERPRETING ARTICLE 14 OF THE EFTA AGREEMENT, THE AUSTRIAN GOVERNMENT INSTRUCTED ALL FEDERAL BUYING DEPARTMENTS THAT AFTER JANUARY 1, 1967, PURCHASING PRACTICES MUST NOT CONTAIN ELEMENTS OF DISCRIMINATION AGAINST SUPPLIERS IN OTHER EFTA COUNTRIES, I.E., THAT ARTICLE 1, 34 OF OENORM LIMITED OFFICIAL USE

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PAGE 03 VIENNA 07376 01 OF 02 130818Z

A-2050 SHALL NOT BE APPLIED IF BIDS ARE RECEIVED FROM FOREIGN EFTA SUPPLIERS. AT THE SAME TIME, THE FEDERAL GOVERNMENT RECOMMENDED THAT PROVINCIAL AND MUNICIPAL GOVERNMENTS, WHICH HAVE THEIR OWN PURCHASING RULES GENERALLY BASED ON OENORM 2050, SHOULD ABSTAIN FROM ANY DISCRIMINATION AGAINST SUPPLIERS IN OTHER EFTA COUNTRIES.

C. NO DATA ARE AVAILABLE TO DETERMINE WHETHER EFTA PROCUREMENT GUIDELINES HAVE RESULTED IN INCREASED PUBLIC PURCHASES OF SUPPLIES FROM OTHER EFTA TRADING PARTNERS. THE NON-DISCRIMINATION PRINCIPLE COMBINED WITH THE REMOVAL OF INTRA-EFTA TARIFF BARRIERS ARE BELIEVED, HOWEVER, TO HAVE IMPROVED THE COMPETITIVENESS OF OTHER EFTA SUPPLIERS VIS-A-VIS AUSTRIAN SOURCES.

D. WITHOUT HAVING CONCRETE EVIDENCE THE AUSTRIAN ECONOMIC CHAMBER BELIEVES THAT THE CONDITIONS OF ACCESS TO PUBLIC SECTOR MARKETS IN OTHER EFTA COUNTRIES HAVE IMPROVED AS A RESULT OF THE EFTA PROCUREMENT GUIDELINES. THAT OPINION IS BASED ON THE RELATIVELY FEW COMPLAINTS ABOUT UNFAIR TREATMENT RECEIVED FROM AUSTRIAN SUPPLIERS.

IN ADDITION, AND WHERE RECEIVED, COMPLIANTS WERE TOO VAGUE TO JUSTIFY BILATERAL REPRESENTATIONS.

E. PUBLIC DISCRETIONARY TENDERS ARE PUBLISHED IN THE OFFICIAL PART OF THE GOVERNMENT-CONTROLLED "WIENER ZEITUNG", THE OFFICIAL BUYER'S BULLETIN" (AMTLICHER LIEFERZANZEIGER), AND SOMETIMES ALSO IN TECHNICAL PERIODICALS. IN SELECTIVE DISCRETIONARY TENDERS AND

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PAGE 01 VIENNA 07376 02 OF 02 130815Z
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LIMITED OFFICIAL USE SECTION 2 OF 2 VIENNA 7376

GENEVA FOR MTN

PRIVATE CONTRACTS THE SUPPLIERS ARE INFORMED INDIVIDUALLY OF THE GOVERNMENTS DEPARTMENT'S INTENTION TO PURCHASE. THE OFFICIAL "BUYER'S GUIDE" (LIEFERANZEIGER AMTLICHER) IS BEING TRANSMITTED BY AIRGRAM. LOCAL DIPLOMATIC OR COMMERCIAL EFTA REPRESENTATIVES ARE RESPONSIBLE FOR INFORMING THEIR RESPECTIVE BUSINESS COMMUNITIES ABOUT PUBLIC TENDERS. FOREIGN SUPPLIERS INTERESTED IN BEING INVITED TO BID ON SELECTIVE TENDERS MUST SO INFORM THE RESPECTIVE BUYING DEPARTMENT.

F. PUBLIC AND SELECTIVE TENDERS ARE OPENED IN THE PRESENCE OF ALL BIDDERS. THE BIDDER'S NAME AND PRICE QUOTATION ARE ANNOUNCED. AFTER THE CONTRACT LIMITED OFFICIAL USE

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PAGE 02 VIENNA 07376 02 OF 02 130815Z

AWARE, UNSUCCESSFUL BIDDERS ARE INFORMED OF THE RESULTS. WITH VERY LARGE TENDERS, THE CONTRACT AWARD IS USUALLY PUBLISHED. NO CASES ARE KNOWN WHERE THE FAIRNESS OF THE CONTRACT AWARD WAS QUESTIONED BECAUSE EX POST INFORMATION ON THE AWARD WAS WITHHELD.

G. NO CASES ARE KNOWN WHERE PUBLIC PROCUREMENT ENTITIES ACTED COUNTER TO THE NON-DISCRIMINATION PRINCIPLE OF EFTA GUIDELINES. HOWEVER, THERE HAVE BEEN

ATTEMPTS TO TAILOR SPECIFICATIONS TO THE CAPABILITIES OF DOMESTIC SUPPLIERS, A COMPLAINT LODGED MAINLY AGAINST PROVINCIAL AND MUNICIPAL PURCHASING DEPARTMENTS.

H. THE EFTA ARRANGEMENT DOES NOT GIVE SUPPLIERS OUTSIDE THE PURCHASING COUNTRY RECOURSE TO ITS PURCHAS-

ING OFFICE FOR CONSIDERATION AND SETTLEMENT OF PROTESTS

AGAINST UNFAIR TREATMENT. INDIVIDUAL COMPLAINTS WOULD BE HANDLED BY THE PURCHASING COUNTRY IN ACCORDANCE WITH NATIONAL REGULATIONS. IF THE COMPLAINING PARTY IS NOT SATISFIED WITH THE TREATMENT OF ITS COMPLAINT, IT CAN REPORT TO THE RESPONSIBLE GOVERNMENT AGENCY IN ITS HOME COUNTRY WHICH IN TURN COULD REQUEST BILATERAL CONSULTATIONS WITH THE PURCHASING COUNTRY. IF THESE DO NOT LEAD TO A SATISFACTORY SETTLEMENT, THE CASE CAN BE TAKEN TO THE EFTA COMMITTEE OF TRADE EXPERTS. SINCE NO ACTUAL CASES HAVE BEEN REPORTED, THE EFFECTIVENESS OF THESE PROCEDURES HAS NOT BEEN TESTED HERE.

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PAGE 03 VIENNA 07376 02 OF 02 130815Z

I. UNDER THE LISBON AGREEMENT, MEMBER STATES ARE TO REPORT TO EFTA ANY SUBSTANTIAL DAMAGES IN LEGISLATION, REGULATIONS OR PRACTICES REGARDING PUBLIC PROCUREMENT OR STATE-TRADING ACTIVITIES.

3. THE COMMITTEE OF TRADE EXPERTS HAS BEEN INSTRUCTED TO KEEP OPERATION OF ARTICLE 14 UNDER CURRENT REVIEW. IN PARTICULAR, IT SHALL CALL, FROM TIME TO TIME, FOR REPORTS ON MEASURES TAKEN BY MEMBER STATES TO FULFILL THEIR OBLIGATIONS UNDER THE ARTICLE AND ON INTERNAL ADMINISTRATIVE EXPERIENCE WITH THE OPERATION OF THESE MEASURES. INFORMATION SHALL ALSO BE EXCHANGED ON THE EFFECTIVENESS OF THE AGREEMENT CONCERNING COOPERATION ON TENDERING PROCEDURES.

4. COMMENT: ALTHOUGH GOA AUTHORITIES EXPRESS SATISFACTION WITH THE EFTA PROCUREMENT ARRANGEMENT, WE HAVE THE IMPRESSION THAT, AT LEAST HERE, THIS IS NOT PRESENTLY A PRIORITY CONCERN. THIS MAY BE PARTLY DUE TO THE FACT THAT THE GOA IS NOW LOOKING MORE TO BRUSSELS THAN GENEVA. IT ALSO COULD REFLECT SOME RESIGNATION SINCE THE FORMAL REMOVAL OF DISCRIMINATORY PROCEDURES AND PRACTICES DOES NOT APPEAR TO HAVE MADE IT VERY MUCH EASIER FOR OUTSIDE SUPPLIERS TO WIN A PUBLIC CONTRACT. CONTINUED USE OF DISCRETIONARY TENDERS WHICH REMAIN THE PREFERRED METHOD IN MOST EFTA MEMBERS, LEAVES TOO MANY LOOPHOLES TO FAVOR DOMESTIC SUPPLIERS WITHOUT OPENLY VIOLATING MULTILATERAL OBLIGATIONS. BORG

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